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Attorneys for Defendant Morris Gad

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

- against -

MORRIS GAD and NATHAN ROSENBLATT,

Defendants.

07-CV-8385 (GEL)

**DECLARATION OF JEFFREY R.
ZUCKERMAN IN SUPPORT OF
DEFENDANT MORRIS GAD'S
MOTION TO DISMISS**

ECF CASE
ELECTRONICALLY FILED

JEFFREY R. ZUCKERMAN declares that:

1. I am admitted to practice before this Court and I am a member of the law firm of Pillsbury Winthrop Shaw Pittman LLP, counsel to Defendant Morris Gad (“Gad”).

I submit this declaration in support of Mr. Gad's motion to dismiss.

2. As discussed more fully in the accompanying memorandum of law, the insider trading complaint filed by the Securities and Exchange Commission (“SEC”) dated September 27, 2007 (attached as **Exhibit A**) should be dismissed as a matter of law because it fails to detail the circumstances constituting fraud with particularity and fails to state a claim upon which relief may be granted. More specifically, the complaint does not

allege with sufficient detail the material nonpublic information allegedly conveyed to Mr. Gad or when and how it was supposedly conveyed.

3. Moreover, the complaint is based on the theory that Mr. Gad traded NBTY, Inc. securities on July 21 and 22, 2004 while in possession of unspecified material, nonpublic information concerning NBTY's results for its fiscal third quarter ended June 30, 2004, which results were announced after the close of the market on July 22, 2004. However, as demonstrated in this motion, the essence of what was announced – specifically, NBTY's disappointing performance in the third quarter – was already a matter of public knowledge and any differences in detail were not material.

4. In support of Mr. Gad's motion to dismiss, attached to this declaration are true and correct copies of the following publicly available documents, including documents pertaining to NBTY's disappointing financial performance and other problems in its 2004 fiscal third quarter:

Exhibit B: July 23, 2004 PBS Nightly Business Report, Transcript #072300cb.118.

Exhibit C: June 17, 2004 NBTY Press Release pre-announcing a decline in sales for the first two months of the third quarter that would continue for the balance of the quarter and impact third quarter results.

Exhibit D: Transcript of a June 17, 2004 NBTY, Inc. operations update conference call.

Exhibit E: June 17, 2007 RBC Capital Markets Research Comment on NBTY, "NBTY Preannounces Sales Shortfall."

Exhibit F: July 13, 2004 Business Wire from Zacks.com, "Zacks Sell List Highlights: NBTY, Inc."

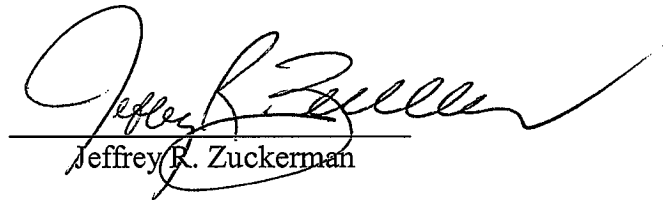
Exhibit G: July 14, 2004 RBC Capital Markets Research Comment on NBTY, Inc., "Continued Weakness in Wholesale: Downgrading to Sector Perform."

Exhibit H: July 21, 2004 US Fed News article, "NBTY Agrees to Pay \$950,000 to Settle Claims that it Shipped Tablets used in Illegal Manufacturing of Methamphetamine."

Exhibit I: July 22, 2004 NBTY Press Release announcing third quarter results.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: October 15, 2007
New York, New York



Jeffrey R. Zuckerman